STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM MUTUAL,

Plaintiff-Appellee,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellant.

UNPUBLISHED
September 26, 2000

No. 220947
Kent Circuit Court
LC No. 97-012396-CK

Before: White, P.J., and Talbot and R. J. Danhof*, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's order granting plaintiff's motion for summary disposition and attorney fees. Plaintiff sought recoupment from defendant under § 3115(1) of the no-fault act, alleging defendant's statutory obligation to pay one-half of the injured claimant's medical expenses because both were insurers of the automobiles causing the claimant's injuries. The circuit court granted plaintiff's motion for summary disposition, awarded plaintiff the damages requested, and also awarded plaintiff attorney fees under the act. We affirm in part and reverse in part.[1]

Defendant contends that the circuit court erred by concluding that plaintiff took sufficient measures to toll the no-fault act's one-year-back limitation period on recovery. MCL 500.3145(1); MSA 24.13145(1). However, after the filing of briefs in this case, a panel of this Court decided *Titan Ins Co v Farmers Ins Co*, __ Mich App __; __NW2d __ (Docket No. 214449, issued 5/23/00), which defendant concedes is controlling. The *Titan* Court held that the limitations provisions of MCL 500.3145(1); MSA 24.13145(1) do not apply to an insurer seeking recoupment from another insurer.

[1] As a preliminary matter, we note that plaintiff challenges defendant's compliance with MCR 7.204(C)(2) in filing this appeal, contending that defendant failed to properly order the transcript of the final hearing. We note that defendant's attorney submitted a statement indicating that transcripts of all the circuit court proceedings had been ordered. MCR 7.204(C)(2) is satisfied where an appellant's attorney files a statement indicating that the transcript has been ordered. Thus, we conclude that plaintiff's challenge to defendant's compliance with the court rules is without merit.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Rather, the general six-year provision of MCL 600.5813:MSA 27A.5813 applies. This action was filed well within the six-year period.

Defendant also contends that the circuit court erred by awarding plaintiff attorney fees under the act. We agree. MCL 500.3148(1); MSA 24.13148(1) provides that a claimant's attorney fees shall be reimbursed where the trial court finds that the insurer unreasonably refused or delayed payment. Defendant contends that plaintiff was not entitled to this reimbursement under the statute because the statute only authorizes a *claimant* to be reimbursed, and plaintiff is an *insurer*. Plaintiff, however, argues that it acquired all of the claimant's rights through subrogation.

In *Hicks v Auto Club Ins Ass'n*, 189 Mich App 420, 422-423; 473 NW2d 704 (1991), a panel of this Court reversed the trial court's award of attorney fees to an insurer recovering reimbursement from another insurer, stating that while the statute provides that an attorney is entitled to a reasonable fee for "advising and representing a claimant," MCL 500.3148(1); MSA 24.13148(1), the prevailing insurer "did not advise or represent the claimant." *Id*. at 423.

Similarly, plaintiff here did not advise or represent the no-fault claimant. Further, as recognized in *Titan, supra*, plaintiff is enforcing statutory recoupment rights in this action, not rights obtained through subrogation. Consequently, we conclude that the circuit court erred in awarding attorney's fees to plaintiff.

We affirm the circuit court's grant of summary disposition to plaintiff, but vacate the award of attorney fees to plaintiff.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Robert J. Danhof*